IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (LODGING) NO.372 OF 2005
IN
ARBITRATION PETITION NO.293 OF 2005

Hari Eswaran ....Appellant

V/s.

Nishkalp Investments & Trading Co.Ltd. ....Respondent

Ms.Rajni Iyer i/b N.S. Nippinai for the Appellant.

Mr.D.S. Purandare i/b M/s.Madekar & Co. for the Respondent.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 26TH APRIL, 2005.

P.C. :

1. This is an Appeal against the order of the learned single Judge dismissing the Appellant's Petition under Section 34 of The Arbitration and Conciliation Act, 1996 (for short "the said Act") refusing to set aside the award of the learned Arbitrator.

2. The impugned order warrants no interference. The learned Judge has dealt with each of the contentions raised by the Appellant in considerable

detail. We are in respectful agreement with the reasoning and finding of the learned single Judge and would like to add only a few words of our own.

3. It appears quite clear that the Appellant's only intention was to prolong the proceeding before the learned Arbitrator. One of the contentions on behalf of the Appellant was that on 13.12.2002, the learned Arbitrator adjourned the hearing of the matter to 6.1.2003 on which day the learned Arbitrator had merely decided to frame issues and give directions for evidence and arguments. As indicated by the learned single Judge, this was not so. The minutes of the meeting held before the learned Arbitrator on 13.12.2002 specifically stated that in case there are no witnesses from both the sides, oral arguments will be heard and no further adjournment will be granted under any circumstance.

4. It was further submitted before us that the learned Arbitrator ought to have adjourned the matter in view of the Appellant's advocate letter dated 12.12.2002 requesting for adjournment. Whether to grant an adjournment or not is the discretion of the learned Arbitrator. It is not for the Court in exercise of powers under Section 34 of the said Act to

sit in Appeal over such decisions of the learned Arbitrator. We are unable to state that the decision not to grant any further adjournment is absurd or perverse. The Appellant's advocate letter seeking an adjournment is dated 12.12.2002. One of the grounds for seeking an adjournment was that the parties were trying to settle the matter. The matter was not adjourned by the learned Arbitrator. The Appellant appears to have taken the learned Arbitrator for granted. The ground for adjournment was unsustainable. In the said minutes of the arbitration proceeding held on 13.12.2002, it was expressly stated on behalf of the Respondent that there was no longer any possibility of a compromise and that the matter should be proceed with. The Arbitrator was therefore justified in proceeding with the matter.

5. In the circumstances, the Appeal is dismissed.